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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/630,069

Filing Date: July 30, 2003

Appellant(s): ANDERSON ET AL.

Dean D. Small
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/18/2009 appealing from the Office action
mailed 7/9/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relyed Upon

5,598,208	McClintock	1-1997
7,448,063	Freeman	11-2008
4,665,438	Miron	5-1987
5,986,803	Kelly	11-1999

Sony, GV-S50 Video Walkman® Operating Instruction (including portable wireless tuner TGV-3), 1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 26, 35, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over S.L McClintock, USPN 5,598,208 (hereinafter "McClintock") in view of Sony Corporation's Video Walkman® GV-S50 Operating Instructions (hereinafter "Sony S50").

2.1. Regarding claim 26, McClintock discloses a portable handheld device to be used at an event by a user while watching the event live (Fig. 9, 254, Col. 9, line 27 through Col. 10, line 5), the portable handheld device comprising:

a receiver to receive video content transmitted to the receiver (signals are transmitted wirelessly from 258, 260, 262, and 264 to the receiving and control station. The portable unit, Video Walkman®, connects to this receiver via 256), the video content being generated by a plurality of cameras located at the event, the video content relating to the event (as shown in Fig. 9, the cameras 258, 260, 262, and 264 are at the event and transmitting related events);

a user interface having inputs to permit a user to select the video content from at least one of the plurality of cameras and having an input to permit the user to select (Fig. 10 shows the selection and input mechanism, where the user of 254 is enabled to choose amongst various camera views), for storage in the device (by selecting buttons 268, the selected view will be stored on the video walkman®'s storage medium), a user-designated portion of the

video content from the selected one of the plurality of cameras (selection of 268 triggers storage of designated video from selected camera);

a processor selectively operated by a user to select video content from at least one of the plurality of cameras (254 has a processor operating interfaces shown in Fig. 10, whereby pushing start/stop buttons associated with various CAM views selects corresponding view);

a display to display video content from at least one of the plurality of cameras selected by the user (Video walkman® 254 has a display, Fig. 10 shows a split screen of said display), **wherein the receiver is configured to receive the video content while at the event and where the event is occurring** (user 252 is at the event, receiving videos as shown in split screen 266), **thereby permitting the user to carry the portable handheld device about the event and choose where to view the video content selected by the user while roaming at the event during the event** (a video walkman® 254 is portable and can be moved around so the user may view recorded content at the place of his/her choosing); and

a memory component to store a user-designated portion of the video content (video Walkman® recording medium, e.g. Hi-8 tape), **wherein the user-designated portion of the video content to be stored in the memory component is selected and entered by the user through the user interface** (video selected via interface 266, and recorded by selecting 268 controls).

McClintock discloses the portable handheld device to be a Video Walkman®. He is not explicit as to the Walkman® wirelessly receiving video content. However, Sony S 50 discloses an interface enabled to accept a portable tuner (TGV-3) for tuning to various broadcast signals. (See pages 10 and 27)

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock with Sony S50 invention, to receive video signals wirelessly in order to enhance the mobility of the viewer/spectator.

2.1.1. Regarding claim 6, **wherein the memory component is a removable memory module configured to allow for downloading of the stored user-designated portion of the event content to an external device**, the system of McClintock and Sony S50 has a Hi-8 recording media which may be ejected and inserted into a different external player/ recorder .

2.1.2. Regarding claim 35, the system of McClintock and Sony S50 discloses **wherein the receiver wirelessly receives live remote event-related video content generated at a remote event and relating to the remote**

event, the remote event occurring simultaneously with the local event, the remote event occurring at a venue remote from the local event, the display displaying the live remote event-related video content when selected at the user interface, as Sony S50's TGV-3 tuner is enabled to receive and tune to channels from cameras within the local venue and channels offering programs from other venues. Selection and display of channels (remote or local) are the same as disclosed in McClintock's Fig. 10.

2.1.2.1. Regarding claim 40, the system of McClintock and Sony S50 discloses, **wherein the local and remote events both constitute a common type of sporting events**, as the user decides which channels to tune to via TGV-3, the user is enabled to select a team/ game type (e.g. if they are already at a football game) and the user wants to follow another team, In order to be kept informed of divisional, playoff status, or keep track of rival teams (for office pool!).

2.1.2.2. Claim 41 is rejected as claim 40, as the user may select any game including **football**.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock, in view of Sony S50, further in view of M.J. Freeman et al., USPN 7,448,063 (hereinafter "Freeman").

3.1. Regarding claim 2, wherein the receiver is configured to receive audio signals relating to the event, and further comprising an audio component configured to provide event content for listening based upon at least one of the audio signals selected by a user, in the system of McClintock and Sony S50, selection of the camera also selects the audio associated with the said camera and the user is not enabled to select any other audio to go with the selected video signal.

However, Freeman, in analogous art, presents the user (via menu controls) with a selection of audio associated with the venue that is then multiplexed with the desired video and sent to the user terminal (Fig. 1, 10, 115, 120; Col. 3, lines 28-32; Col. 6, lines 20- 40; Fig. 2, Col. 7, lines 33- 40).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Freeman's invention, in order to further personalize the content of the program with video, audio, and data selected to match user desires.

4. Claims 5, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock, in view of Sony S50, further in view of A. Miron et al., USPN 4,665,438 (hereinafter "Miron")

4.1. Regarding claim 5, **wherein the memory component is controlled by the user interface to access and replay the stored user- designated portion of the event related video content on the display, thereby permitting the user to review again and again, as desired, the stored user-designated portion of the video content independent of new live video content received by the receiver**, McClintock discloses that the video Walkman® is enabled to show the pre- recorded content along with live programming in a PIP mode (Col. 5, line 66 through Col. 6, line 4). The system of McClintock and Sony S50 is not explicit in offering the user the capability of watching the previously recorded program, on the local memory of the Walkman®, while viewing the live event on the display.

However, Miron discloses that PIP enables the viewer to simultaneously watch one program tuned to externally (e.g. live channel) while viewing a second program from another source, such as VCR (Col. 3, lines 19- 26).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of inventions, to modify the system of McClintock and Sony S50 with Miron's invention in order to allow the viewer to not only watch the live program (from desired angles) but also view previously recorded content at the same time.

4.2. Regarding claim 30, the system of McClintock, Sony S50, and Miron discloses that **the portable wireless handheld device comprises an optics system to detect user-controlled video content separate and independent from the video content produced by the plurality of cameras and received by the receiver**, as the system is enabled to recognize user controlled video content, what is already recorded by the user, and display it is a window other than content offered by others in a different window frame using PIP technology.

5. Claims 9, 11, 13, 20 , 22, 27-29, 31-34, 36-39, and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock, in view of Sony S50, further in view of S.L. Kelly, USPN 5,986,803 (hereinafter "Kelly").

5.1. Regarding claim 9, the system of McClintock and Sony S50 is a video viewer/player; therefore it does not disclose wherein **the processor operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode, a digital camera mode and a camcorder mode.**

However, Kelly discloses a modular reconfigurable electronic imaging system (Abstract, Fig. 2), where a **processor (108) operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode (148, also display module 118 is enabled to display content from any module of the system), a digital camera mode (120) and a camcorder mode (122).** Col. 7 line 18 through Col. 8, line 14.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Kelly's invention, in order to have a "Swiss Army knife" version of a camcorder, video player, binocular in a compact form to offer the viewer multiple functionalities.

5.2. Regarding claim11, as analyzed in claim 9, the portable wireless handheld device of McClintock, Sony S50, and Kelly has a digital camera. Digital cameras have **optics systems provided as part of a housing to capture images of the event when directed toward the event** at the user's command.

5.3. Regarding claim 13, the system of McClintock, Sony S50, and Kelly is not explicit in **the optics system comprising a charge coupled device (CCD) and being configured to provide a plurality of magnified modes of operation**. However the use of CCD in digital cameras is notoriously well known as they provide a lightweight and inexpensive alternative to mechanical movement of the lens for tilt, pan, and zoom operation.

5.4. Regarding claim 20, the system of McClintock, Sony S50, and Kelly discloses that **the portable wireless handheld device** has a display (124), **wherein the display is configured for viewing by a user when engaged with the user's face** (display 124 is viewed by the user engaging their face to the device 100, putting their eyes to 132).

5.5. Regarding claim 27, the system of McClintock, Sony S50, and Kelly discloses that the user interface permits the user to selectively store single individual images, to be reviewed again and again on the display as desired by the user, Kelly: electronic camera module 120 is operable to take pictures for repeated viewing as desired by the user.

5.6. Regarding claim 28, the system of McClintock, Sony S50, and Kelly discloses an optics system that, when directed toward the event, provides binocular functionality, the display displaying video content from the receiver when in a video viewer mode and a magnified view of the event as detected by the optics system when in a binocular mode (Kelly, Col. 6, lines 54- 65).

5.7. Regarding claim 29, the system of McClintock, Sony S50, and Kelly discloses an optics system that, when directed toward the event, provides binocular functionality (as analyzed in claim 28, Kelly, Col. 6, lines 54- 65), the display displaying a magnified view of the event as detected by the optics system when in a binocular mode, the user interface including inputs to select

between different magnification levels at which the magnified view of the event is presented on the display (as analyzed in claim 13, digital cameras/binoculars are notoriously well known to be equipped with optics systems (CCD) allowing the user to pan, tilt, zoom at will, as CCDs provide a lightweight and inexpensive alternative to mechanical movement of the lens to achieve the same effect.

5.8. Regarding claim 31, McClintock discloses a portable handheld device to be used at a local event (the user 254 is at the racing venue of Fig. 9, therefore he/she is local to the event) **by a user while watching the local event live** (Fig. 9, 254, Col. 9, line 27 through Col. 10, line 5), **the portable handheld device comprising:**

a receiver to receive video content transmitted to the receiver (signals are transmitted wirelessly from 258, 260, 262, and 264 to the receiving and control station. The portable unit, Video Walkman®, connects to this receiver via 256), **the video content being generated by a plurality of cameras located at the local event, the video content relating to the local event** (as shown in Fig. 9, the cameras 258, 260, 262, and 264 are at the event and transmitting related events);

a user interface having inputs to permit a user to select the video content from at least one of the plurality of cameras (Fig. 10 shows the

selection and input mechanism, where the user of 254 is enabled to choose amongst various camera views);

a processor selectively operated by a user to select video content from at least one of the plurality of cameras (254 has a processor operating interfaces shown in Fig. 10, whereby pushing start/stop buttons associated with various CAM views selects corresponding view);

a display to display video content from at least one of the plurality of cameras selected by the user (Video walkman® 254 has a display, Fig. 10 shows a split screen of said display), **wherein the receiver is configured to receive the video content while at the local event and where the local event is occurring** (user 252 is at the event, receiving videos as shown in split screen 266), **thereby permitting the user to carry the portable handheld device about the local event and choose where to view the video content selected by the user while roaming at the local event during the local event** (a video walkman® 254 is portable and can be moved around so the user may view recorded content at the place of his/her choosing).

McClintock discloses the portable handheld device to be a Video Walkman®. He is not explicit as to Walkman® **wirelessly** receiving video content. However, Sony S 50 discloses an interface enabled to accept a portable tuner (TGV-3) for tuning to various broadcast signals. (See pages 10 and 27)

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock with Sony S50 invention, to receive video signals wirelessly in order to enhance the mobility of the viewer/spectator.

The system of McClintock and Sony 50S does not disclose:

an optics system that, when directed toward the local event, provides binocular functionality to produce magnified video content separate and independent from the video content produced by the plurality of cameras and received by the receiver;

However, Kelly discloses a modular reconfigurable electronic imaging system (Abstract, Fig. 2), where a processor (108) operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode (148, also display module 118 is enabled to display content from any module of the system), a digital camera mode (120) and a camcorder mode (122). Col. 7 line 18 through Col. 8, line 14. As binocular, **when directed toward the local event, provides binocular functionality to produce magnified video content separate and independent from the video content produced by the plurality of cameras and received by the receiver** (Kelly, Col. 6, lines 54- 65); thereby

such video is another video signal amongst signals fed to McClintock's Fig. 10 for selection by the user and **display** as desired by the user.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Kelly's invention, in order to allow the user to zoom in on a particular scene, different than what is offered by other cameras at the venue, to enhance the user's personalized experience.

5.8.1. Regarding claim 22, the system of McClintock, Sony S50, and Kelly discloses, **wherein the processor is configured to provide conditional access to the event content based upon a unique access code**, as demonstrated by McClintock, the interface between the user equipment and the system may be secured by providing an alphanumeric keypad which is used to authorizes the user, through pre-issued PINs (code index), to select which camera to use (Col. 7, Lines 59- 62).

5.8.2. Regarding claim 36, the system of McClintock, Sony S50, and Kelly discloses **wherein the receiver wirelessly receives live remote event-related video content generated at a remote event and relating to the**

remote event, the remote event occurring simultaneously with the local event, the remote event occurring at a venue remote from the local event, the display displaying the live remote event-related video content when selected at the user interface, as Sony S50's TGV-3 tuner is enabled to receive and tune to channels from cameras within the local venue and channels offering programs from other venues. Selection and display of channels (remote or local) are the same as disclosed in McClintock's Fig. 10.

5.8.2.1. Regarding claim 42, the system of McClintock, Sony S50, and Kelly discloses, **wherein the local and remote events both constitute a common type of sporting events**, as the user decides which channels to tune to via TGV-3, the user is enabled to select a team/ game type (e.g. if they are already at a football game) and the user wants to follow another team, In order to be kept informed of divisional, playoff status, or keep track of rival teams (for office pool!).

5.8.2.2. Claim 43 is rejected as claim 42, as the user may select any game including **football**.

5.9. Regarding claim 32, McClintock discloses a portable handheld device to be used at a local event (the user 254 is at the racing venue of Fig. 9, therefore he/she is local to the event) by a user while watching the local event live (Fig. 9, 254, Col. 9, line 27 through Col. 10, line 5), the portable handheld device comprising:

a receiver to receive video content transmitted to the receiver (signals are transmitted wirelessly from 258, 260, 262, and 264 to the receiving and control station. The portable unit, Video Walkman®, connects to this receiver via 256), the video content being generated by a plurality of cameras located at the local event, the video content relating to the local event (as shown in Fig. 9, the cameras 258, 260, 262, and 264 are at the event and transmitting related events);

a processor selectively operated by a user to select video content from at least one of the plurality of cameras (254 has a processor operating interfaces shown in Fig. 10, whereby pushing start/stop buttons associated with various CAM views selects corresponding view);

a user interface having inputs to permit a user to select the video content from at least one of the plurality of cameras (Fig. 10 shows the selection and input mechanism, where the user of 254 is enabled to choose amongst various camera views);

a display to display video content from at least one of the plurality of cameras selected by the user (Video walkman® 254 has a display, Fig. 10

shows a split screen of said display), **wherein the receiver is configured to receive the video content while at the local event and where the local event is occurring** (user 252 is at the event, receiving videos as shown in split screen 266), **thereby permitting the user to carry the portable handheld device about the local event and choose where to view the video content selected by the user while roaming at the local event during the local event** (a video walkman® 254 is portable and can be moved around so the user may view recorded content at the place of his/her choosing).

McClintock discloses the portable handheld device to be a Video Walkman®. He is not explicit as to Walkman® **wirelessly** receiving video content. However, Sony S 50 discloses an interface enabled to accept a portable tuner (TGV-3) for tuning to various broadcast signals. (See pages 10 and 27)

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock with Sony S50 invention, to receive video signals wirelessly in order to enhance the mobility of the viewer/spectator.

The system of McClintock and Sony 50S does not disclose:

a digital camera, provided in the handheld housing, for capturing at least one of images and video;
the user interface having inputs to operate the digital camera; and
the processor operating in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode, and a digital camera mode.

However, Kelly discloses a modular reconfigurable electronic imaging system (Abstract, Fig. 2), where **the processor (108) operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode (148, also display module 118 is enabled to display content from any module of the system), a digital camera mode (120) and a camcorder mode (122)**. Col. 7 line 18 through Col. 8, line 14. **A digital camera, provided in the handheld housing, for capturing at least one of images and video** (Kelly, Col. 6, lines 54- 65); **the user interface having inputs to operate the digital camera** (Fig. 2, 133,108); and thereby subject to control by McClintock's Fig. 10 for **selection by the user and display as desired by the user.**

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Kelly's invention, in order to allow the user to take pictures of the scenes different than

what is offered by other cameras at the venue, to enhance the user's personalized experience.

5.9.1. Regarding claim 37, the system of McClintock, Sony S50, and Kelly discloses **wherein the receiver wirelessly receives live remote event-related video content generated at a remote event and relating to the remote event, the remote event occurring simultaneously with the local event, the remote event occurring at a venue remote from the local event, the display displaying the live remote event-related video content when selected at the user interface**, as Sony S50's TGV-3 tuner is enabled to receive and tune to channels from cameras within the local venue and channels offering programs from other venues. Selection and display of channels (remote or local) are the same as disclosed in McClintock's Fig. 10.

5.9.2. Regarding claim 45, as analyzed in claim 32, the portable wireless handheld device of McClintock, Sony S50, and Kelly has a digital camera. Digital cameras have optics systems provided **as part of handheld**

housing to capture images of the event when directed toward the event at the user's command.

The system of McClintock, Sony S50, and Kelly is not explicit in the optics system **comprising a charge coupled device (CCD) and being controlled by the processor to provide a zoom capability**. However the use of CCD in digital cameras was notoriously well known at the time of invention as they provide a lightweight and inexpensive alternative to mechanical movement of the lens for tilt, pan, and **zoom** operation.

5.10. Regarding claim 33, McClintock discloses a portable handheld device to be used at a local event (the user 254 is at the racing venue of Fig. 9, therefore he/she is local to the event) **by a user while watching the local event live** (Fig. 9, 254, Col. 9, line 27 through Col. 10, line 5), **where a remote event occurs simultaneously with the local event, the remote event occurring at a venue remote from the local event** (there are multiple events, e.g. football games, held at various stadiums at the same time, across the country), **the portable handheld device comprising:**

A handheld housing (254);

a receiver to receive live local event- related video content (signals
are transmitted wirelessly from 258, 260, 262, and 264 to the receiving and
control station. The portable unit, Video Walkman®, connects to this receiver via
256 and receives content related to the events at the local venue), **the live local**
event-related video content being generated by a plurality of cameras
located at the local event and relating to the local event (as shown in Fig. 9,
the cameras 258, 260, 262, and 264 are at the event and transmitting related
events), **wherein the receiver is configured to receive the live local video**
content while at the local event and where the local event is occurring (user
252 is at the event, receiving videos as shown in split screen 266), thereby
permitting the user to carry the portable handheld device about the local
event and choose where to view the a selected one of live local event-
related video content while roaming at the local event during the local
event (a video walkman® 254 is portable and can be moved around so the user
may view recorded content at the place of his/her choosing)

a user interface, provided on the handheld housing, having inputs to
permit a user to select amongst the live local event-related video content
(Fig. 10 shows the selection and input mechanism, where the user of 254 is
enabled to choose amongst various camera views);

a display, the display displaying the live local event-related video
content when selected by the user, the display displaying the at least one
of video captured by the cameras when selected by the user (Video

walkman® 254 has a display, Fig. 10 shows a split screen of said display. And are selectable via interface 270 while displayed at 266),

a processor , provided in the handheld housing, to control operation of the display based on inputs from the user through the user interface
(254 has a processor operating interfaces shown in Fig. 10, whereby pushing start/stop buttons associated with various CAM views selects corresponding view);

McClintock discloses the portable handheld device to be a Video Walkman®. He is not explicit as to Walkman® **wirelessly** receiving video content. Also, he does not disclose **a receiver provided in the handheld housing**, operable to receive and operate on **live remote event-related video content**.

However, Sony S 50 discloses an interface enabled to accept a portable tuner (TGV-3), whereby both GV-S50 and TGV-3 attach together to form one portable unit for tuning to various broadcast signals, thereby wirelessly receiving signals and tuning to channels remote to local venue. (See pages 10 and 27)

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock with Sony S50 invention, to

receive video signals wirelessly from both local and remote venues and enable the user to select amongst local and remote signals in order to enhance the mobility of the viewer/ spectator while enhancing the user experience.

The system of McClintock and Sony 50S does not disclose:

a digital camera, provided in the handheld housing, for capturing at least one of images and video;

the user interface having inputs to operate the digital camera

However, Kelly discloses a modular reconfigurable electronic imaging system (Abstract, Fig. 2), where the processor (108) operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode (148, also display module 118 is enabled to display content from any module of the system), **a digital camera mode (120)** and a camcorder mode (122). Col. 7 line 18 through Col. 8, line 14. **A digital camera, provided in the handheld housing, for capturing at least one of images and video** (Kelly, Col. 6, lines 54- 65); **the user interface having inputs to operate the digital camera** (Fig. 2, 133,108); and thereby subject to control by McClintock's Fig. 10 for **selection** by the user and **display** as desired by the user.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Kelly's invention, in order to allow the user to take pictures of the scenes different than what is offered by other cameras at the venue, to enhance the user's personalized experience.

5.10.1. Regarding claim 34, the system of McClintock and Sony S50 is a video viewer/ player; therefore it does not disclose wherein **the processor operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode, a digital camera mode and a camcorder mode.**

However, Kelly discloses a modular reconfigurable electronic imaging system (Abstract, Fig. 2), where a **processor (108) operates in a plurality of modes, wherein the plurality of modes comprises each of a video viewer mode (148, also display module 118 is enabled to display content from any module of the system), a binocular viewer mode (Col. 6, lines 54-60), a digital camera mode (120) and a camcorder mode (122). Col. 7 line 18 through Col. 8, line 14.**

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Kelly's invention, in order to have a "Swiss Army knife" version of a camcorder, video player, binocular in a compact form to offer the viewer multiple functionalities.

5.10.2. Regarding claim 38, the system of McClintock, Sony S50, and Kelly discloses, **wherein the local and remote events both constitute a common type of sporting events**, as the user decides which channels to tune to via TGV-3, the user is enabled to select a team/ game type (e.g. if they are already at a football game) and the user wants to follow another team, In order to be kept informed of divisional, playoff status, or keep track of rival teams (for office pool!).

5.10.3. Claim 39 is rejected as claim 38, as the user may select any game including **football**.

5.10.4. Regarding claim 44, as analyzed in claim 33, the portable wireless handheld device of McClintock, Sony S50, and Kelly has a digital camera. Digital cameras have optics systems provided **as part of handheld housing to capture images of the event when directed toward the event** at the user's command.

The system of McClintock, Sony S50, and Kelly is not explicit in the optics system **comprising a charge coupled device (CCD) and being controlled by the processor to provide a zoom capability.** However the use of CCD in digital cameras was notoriously well known at the time of invention as they provide a lightweight and inexpensive alternative to mechanical movement of the lens for tilt, pan, and **zoom** operation.

6. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock, in view of Sony S50, further in view of Kelly, in further view of Freeman.

6.1. Regarding claim 23, in the system of McClintock, Sony S50, and Kelly , selection of the camera also selects the audio associated with the said camera and the user is not enabled so that **a user input selectively operable by a user to control the images and sounds provided to the display and audio system.**

However, Freeman, in analogous art, presents the user (via menu controls) with a selection of audio associated with the venue that is then multiplexed with the desired video and sent to the user terminal (Fig. 1, 10, 115, 120; Col. 3, lines 28-32; Col. 6, lines 20- 40; Fig. 2, Col. 7, lines 33- 40).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock and Sony S50 with Freeman's invention, in order to further personalize the content of the program with video, audio, and data selected to match user desires.

(10) Response to Argument

Appellant begins by presenting an embodiment of McClintock that has not been used by the examiner in rejecting claims under appeal (pages 13-16 of the appeal brief).

Examiner points out that the McClintock teaching relied by examiner is particularly shown in Figs. 9, and 10, Col. 9 line 28 through Col. 10 line 17. In this embodiment, McClintock discloses a System Signal Receiving and Control module for receiving and tuning into signals broadcasted (wirelessly) by multiple transmitters (258,260,262,164) attached by a wire 256 to a modified Walkman® configured to present to the user an interface (as shown in Fig. 10) allowing the user to view, select, and record various signals captured by the tuner/ receiver.

It is observed that the receiver/tuner of McClintock is not portable. It is for this reason that the Sony GV-S50 reference was introduced as it discloses a portable tuner (TGV-3) receiving broadcast signals wirelessly while attaching (portably) to the Walkman®.

Examiner submits that it would have been obvious to one of ordinary skill to modify McClintock system with the portability feature of Sony tuner in order to provide full mobility to the user.

Arguments with respect to claim 26:

Appellant argues that the combination of McClintock and Sony S50 "**1) would render McClintock inoperative for its intended purpose**". Page 16 of the Appeal Brief, 2nd Paragraph

To Support this argument Appellant presents that "**McClintock does not teach or suggest a portable wireless handheld device having a receiver to receive video content transmitted wirelessly to the receiver. Nor does McClintock teach or suggest a portable handheld device having a receiver to receive the video content while at the event and where the event is occurring, thereby permitting the user to carry the portable wireless handheld device about. Claim 26 requires the handheld device to have the receiver and to receive video content that is wirelessly transmitted to the receiver.**" Page 17 of the Appeal Brief, 3rd paragraph

Examiner disagrees. It is correct that McClintock's portable handheld device (254 in Fig. 9), a modified Sony Walkman®, does not have a wireless receiver. McClintock connects the Walkman®, via wire 256 to a wireless receiver/ tuner (System Signal Receiving and Control Device) enabled to receive programming signals from remote transmitters 258, 260, 262, and 264 (Col. 9, line 28 through

Col. 10, line5) . As such McClintock system is handheld with a wireless receiver/ tuner, yet because of the fixed tuner not portable.

It was well known in the art at the time of invention to provide portable handheld wireless TVs so the user can view programming at any time/place as evidenced by Sony S50 (and its attachable/ portable tuner TGV-30, Page 27).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the system of McClintock (fixed wireless tuner) with Sony S50's portability of tuner TGV-3 in order to enable the user to move about.

Appellant further argues that "McClintock's control station does not include wireless transmitters and McClintock does not describe an infra-structure that would support wireless transmission from the control station. Further, the Office Action does not suggest modifying McClintock's control station, but instead notes that McClintock's cameras 258,260, 262 and 264 are connected to the handheld device 254 through a cable 256 (page 4, second paragraph). The Office Action maintains that it would have been obvious to entirely remove and bypass the control station and instead have the individual cameras wirelessly transmit camera views directly to the video recorder 254."

Examiner disagrees as this argument is based on a misunderstanding/misrepresentation of the office action and the respective prior art.

As described above, the examiner contends that it would have been obvious to one of ordinary skill in the art to modify the tuner (system signal receiving and control) of McClintock with Sony S50 tuner (TGV-3) in order to provide full mobility to the user. At no point has the examiner required and/or represented eliminating/ bypassing McClintock's tuner.

Appellant further questions McClintock by claiming that "*The event illustrated in Figure 9 is a car race, such as the Indianapolis 500 (Col. 9, lines 54-56). Therefore, the cameras on the individual cars and located about the track are provided at an event in which the cars are moving extremely fast over a large area and in an environment that is highly adversarial to transmission of wireless signals. There is a significant amount of interference in the available wireless frequency ranges. The drivers/pit crews use a large amount of the available wireless frequency range. It would be practically impossible to maintain reliable video streams from multiple individual cars to McClintock's recorder.*" Page 20 of the Appeal Brief, 1st paragraph

Examiner submits that overcoming various channel adversities (interference, cross talk, fading, etc.) have been long known and have been effectively combated and addressed in the art. Therefore, there is no question as to the operability of McClintock system. By the same token, it appears the Appellant relies on similar knowledge in the art to enable their alleged invention as there is no disclosure specific to combating any environmental adversities in receiving the signals present in the appellant's submission.

Appellant further states that "**If McClintock's recording device were modified as proposed in the Office Action, the foregoing split screen display functionality would be entirely removed and would no longer be available to the user. The modified recorder could not provide a split screen view of multiple cameras at the same time. The modified recorder could not permit the user to change instantaneously between views and could not allow the user to create a customized version of the event**". Page 21 of the Appeal Brief, 1st paragraph

Examiner disagrees. McClintock's modified Walkman® is disclosed to have the split screen/ user interface of Fig. 10 (also see Col. 9, lines 57-59). Modifying McClintock's tuner with the portability disclosed by Sony S50 (TGV-3) does not impact McClintock's operability.

Appellant further argues that the Sony S50 "**tuner (TGV-3) is only capable of receiving a signal broadcast frequency at one point in time**". Page 21 of the Appeal Brief, 2nd paragraph, 4th line

Examiner submits that the ability of tuning to multiple sources and displaying the same has been disclosed by McClintock (Fig. 10, Col. 9, lines 57-59). Examiner has relied on the portable tuner of Sony S50 to teach that one of ordinary skill in the art could have modified McClintock's tuner at the time of invention to be portable.

Appellant argues that the combination of McClintock and Sony S50 "**2) would require McClintock system to be fundamentally redesigned**". Page 16 of the Appeal Brief, 2nd Paragraph

To Support this argument Appellant questions McClintock's operability due to FCC regulations as to the frequencies and transmitter powers permitted (Page 22 of the Appeal Brief, 1st and 2nd paragraph).

Examiner respectfully points out that the appellant has neither disclosed, nor claimed frequency/ power regulations/ permission by regulatory authorities.

Furthermore, the standard for patentability is whether or not that claimed is made obvious by the cited prior art (McClintock and Sony S50) and not whether the proposed combination would have complied with the FCC regulations presently or at the time of the invention.

Appellant further argues that "*McClintock expressly teaches away from the use of a wireless connection to the recording devices 254. McClintock states that preferably the connection to the recording device "utilizes a cable 256 with specially adapted terminals to prevent unauthorized use.*" (Col. 9, lines 33-35)". Page 23 of the Appeal Brief, 2nd paragraph

Examiner point out the connection between McClintock's tuner and disclosed Sony Walkman® is via proprietary connection (Cable 256). The Sony S50 does not require the portable tuner TGV-3 to be connected to the Walkman® wirelessly but through a physical connection (proprietary pin connectors).

As to *preventing unauthorized use*, Examiner respectfully points out that the appellant has neither disclosed, nor claimed any type of permissioning and/ or authorization requirements/ processes. It is noted that the features upon which applicant relies (i.e., *preventing unauthorized use.*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant argues that the combination of McClintock and Sony S50 "**3) has no rational underpinning to make such changes and 4) relies on improper hindsight**". Page 16 of the Appeal Brief, 2nd Paragraph

In support Appellant argues that "**There is absolutely no discussion in McClintock of any need for a wireless portable recorder. The Sony S50 Manual has absolutely nothing to do with, and is not used in, any application even remotely resembling McClintock's system. The Sony S50 Manual is simply a portable TV tuner. McClintock's system is not a portable TV. McClintock's system is a recording network that is configured to provide users with particular capabilities in connection with producing their own recording by selecting quickly between multiple camera feeds which are co-displayed in a split screen to the user. The functionality and operations of McClintock's recorder are fundamentally different and have nothing to do with simply watching TV on a portable television.**". Page 25 of the Appeal Brief, 1st paragraph

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized

that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

McClintock in particular discloses a modified Walkman® as in Fig. 9 (element 254, as also described in Col. 9, lines 30-33), and Sony 50 recognizes and discloses a portable tuner (TGV-3) attachable to said Walkman® enabling the user to select and tune into various channels/ programming sources to view and/or record. The capability of viewing multiple programs transmitted/ broadcast by various sources (e.g. multiple feeds) is recognized, disclosed, and enabled by McClintock Tuner (Fig. 9, Col. 9, lines 28- 53). Sony S50 discloses that the tuner for selecting programs is made portable. Therefore, it would have been obvious to one of ordinary skill in the art to modify the system of McClintock (Fixed tuner connected to Walkman®) with a portability of Sony S50 (Walkman®) tuner TGV-3.

Arguments with respect to claims 31 and 32:

Appellant has not presented any new argument and relies on arguments presented for independent claims 26, which have been addressed by the examiner.

Arguments with respect to claim 33:

Appellant has not presented any new argument and relies on arguments presented for independent claims 26, which have been addressed by the examiner.

In addition, Appellant states "***the Office Action fails to recognize that McClintock's portable recorder entirely lacks ANY wireless receiver...***" Page 29 of the Appeal Brief, 3rd paragraph

Examiner disagrees and points out that the system of McClintock, as shown in Fig. 9, does provide the Walkman® 254 with a wireless receiver (tuner, System Signal Receiving and Control) via connection 256.

Arguments with respect to claim 35:

Appellant has not presented any new argument and relies on arguments presented for independent claims 26, and 33 which have been addressed by the examiner.

Arguments with respect to claims 36 and 37:

Appellant has not presented any new argument and relies on arguments presented for independent claims 26, 31, 32 and 33 which have been addressed by the examiner.

Arguments with respect to claims 34:

Appellant has not presented any new argument and relies on arguments presented for independent claim 33 which have been addressed by the examiner.

Arguments with respect to claims 38-39 and 42-43:

Appellant argues that "***Claims 38- 39 and 42-43 require that the portable wireless handheld device permit the user through the user interface to select between local and remote events, both of which constitute either a common type of sporting event or specifically constitutes football games***". (Page 35 of the Appeal Brief, last two lines through Page 36, 1st two lines

Appellant further argues that "***Nowhere does McClintock, the Sony \$50 Manual or Kelly teach or suggest that a spectator would have any interest, or that the recording device should display in addition to McClintock's local event, a remote sporting event of a common type or more specifically local and remote football games***". Page 36 of the Appeal Brief, lines 6-9

Examiner disagrees. McClintock's user interface (Fig. 10) allows the viewer to select from available program sources/ transmitters as shown in 266; therefore McClintock's tuner (System Signal Receiving and Control Unit in Fig. 9) is enabled to tune to sources selected by the viewer. Sony S50 tuner (TGV-3) also allows the viewer to tune to any available channel/ frequency at will. Appellant has neither disclosed nor claimed how to distinguish between sporting event types, other programming genres, football game and/ or other type of games.

Appellant's channel/ program selection process is left to the cognitive abilities and desires of the user as in the system of McClintock and Sony S50 which naturally allows the user to select any channel/ program of any type and/or genre as desired.

Arguments with respect to claims 40 and 41:

Appellant argues that "*The person of ordinary skill would have had NO legitimate reason to modify McClintock in view of the Sony S50 Manual in a manner that would render obvious the claimed invention*". Page 36 of the Appeal Brief, 4th paragraph

In response to appellant's argument that there is no reason/suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, McClintock has disclosed a receiver/ tuner (Fig. 9, element 256, System Signal Receiving and Control) enabled to receive programming from multiple sources (258, 260, 262, 264), attachable to a modified Walkman® via 256. McClintock tuner though enabled to receive

programming signals wirelessly, is not portable. Sony S50 discloses a portable tuner (TGV-3 as in page 27, 1st paragraph) enabling the Walkman® to tune to various channels/ program sources. Therefore, it would have been obvious to one of ordinary skill to modify McClintock tuner with the portability feature of Sony S50 tuner (TGV-3) in order to provide full mobility to the user.

Appellant argues that "*Nowhere does McClintock or the Sony S50 Manual teach or suggest that a spectator would have any interest, or that the recording device should display in addition to McClintock's local event, a remote sporting event of a common type or more specifically local and remote football games*". Page 36 of the Appeal Brief, last line through Page 37, first 3 lines

Examiner disagrees. McClintock's system is disclosed to receive programming from remote transmitters (e.g. 258). McClintock's Fig. 9 depicts a sporting event (auto racing). The tuner of McClintock (System Signal Receiving and Control) is enabled to tune to any source desired by the user. McClintock's user interface, as shown in Fig. 10, allows the user to view multiple programming sources at the same time. Furthermore, Sony S50 portable tuner (TGV-3) allows the user to tune into any program desired by the user.

Examiner respectfully points out that the appellant has neither disclosed, nor claimed how to distinguish between sporting event types, other programming

genre, a football game and/ or other type of games. Appellant's channel/ program selection process is left to the cognitive abilities and desires of the user as in the system of McClintock and Sony S50 which naturally allows the user to select any channel, program of any type and/or genre as desired.

Appellant argues that "***Sony S50 Manual does not discuss any type of sporting content to display***". Page 37 of the Appeal Brief, 1st paragraph, 4th and 5th lines

Examiner disagrees. Sony tuner is enabled to tune into any program desired by the user and the Walkman® display is enabled to present the selected program. Furthermore, appellant has neither disclosed nor claimed how to distinguish one programming genre over another. This task appears to have been left to the sole discretion of the user (same as in Sony's tuner).

Appellant argues that "***McClintock and the Sony S50 Manual do not teach or suggest to group live local and remote event content based on common types of events or based on, more specifically, football games as claimed***". Page 37 of the Appeal Brief, 1st paragraph, last two lines

Examiner disagrees. Appellant has neither disclosed nor claimed any type of grouping of the programs (live, local, etc.). Such selection is left to the discretion of the user, the same as the system of McClintock and Sony S50.

Appellant argues that "*the Office Action is applying improper hindsight to attempt to piece together un-related prior art references to reconstruct the claimed invention*". Page 37 of the Appeal Brief, 2nd paragraph

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, McClintock and Sony S50 are not un-related prior art. McClintock in particular discloses a modified Walkman® as in Fig. 9 (element 254, as also described in Col. 9, lines 30-33), and Sony 50 recognizes and discloses a portable tuner (TGV-3) attachable to said Walkman® enabling the user to select and tune into various channels/ programming sources to view and/or record.

Arguments with respect to claims 2, 5-6, 9, 11, 13, 20 and 27- 30:

Appellant has not presented any new argument and relies on arguments presented for independent claim 26 which have been addressed by the examiner.

Arguments with respect to claims 22 and 23:

Appellant has not presented any new argument and relies on arguments presented for independent claim 31 which have been addressed by the examiner.

Arguments with respect to claim 44 and 45:

Appellant has not presented any new argument and relies on arguments presented for independent claims 33 and 32 which have been addressed by the examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James R. Marandi/

Examiner, Art Unit 2421

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/John W. Miller/

Supervisory Patent Examiner, Art Unit 2421

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